

JEREMY C. TOTH

Attorney

FILED MAY 06 11 PM 12:05

May 5, 2011

Adam Perry, Chairman
Erie County Reapportionment Commission
c/o Erie County Legislature
92 Franklin Street
Buffalo, NY 14202

Dear Mr. Perry:

I want you to know that despite our obvious differences of opinions and the contentious nature of our last meeting, I have seriously considered your comments as well as those comments from the Republican members of the Commission. I have taken them to heart and submit, for your consideration, the enclosed map.

First, my understanding of the differing viewpoints shared at our last meeting are as follows:

1. It is your belief that a district can be considered a majority-minority district when the voting age population of the minority community is something less than 60%.¹ I think its fair to say that you did not specify what you thought the exact number was but that case law afforded the opportunity for something less.
2. Further, you suggested that a combination of Latinos and African Americans comprising a majority of the voting age population could also be considered a majority-minority district.
3. Republican members of the Commission stated that their top priority was one person-one vote and that that priority was more important than keeping towns intact. The implicit criticism of my previously submitted maps then is that the deviation between the highest and the lowest district was too wide.

Again, while I disagree with these opinions, I wanted to attempt to draw a map that incorporated them without totally abandoning my own beliefs.

As you can see from the map, I have divided a small portion of the Town of Cheektowaga and included it into a largely African American district (65% of the voting age population). A second district, wholly within the City of Buffalo has 55% of the voting age population split between Latinos and African Americans; a second majority-minority district under your premise as described above.


I have also taken a small part out of the City of Tonawanda and combined it with Grand Island and North Buffalo. By doing this I was able to keep the deviation between the highest district and the lowest district under 4%.



One final point is worth making. As it stands, I have used the census numbers available at the Board of Elections, including the current prison populations. Obviously, if this number changes then some adjustment will be necessary but I think we can make adjustments without disturbing the basic integrity of this map.

I look forward to our next meeting and a spirited discussion.

Sincerely,



Jeremy C. Toth

ⁱ At our last meeting, you took great pains to suggest my legal research was less than stellar, pointing out sections of the case I cited that, according to you, undermined my own argument. The point of citing the case *African American Voting Rights Legal Defense Fund, Inc. v. Villa*, 54 F.3d 1345; (8th Cir 1995), was not to provide a definitive answer to what percentage of minorities constitutes a majority-minority district. The truth is only a judge can answer that question definitively. I was simply providing the Commission the reference point I used to answer the question. In other words, 60% was not a number I pulled out of the air but rather the percentage I found in relevant case law. The exact language from the above case is : "A guideline of 65% of total population has been adopted and maintained for years by the Department of Justice and by reapportionment experts and has been specifically approved by the Supreme Court in circumstances comparable to those before us as representing the proportion of minority population reasonably required to ensure minorities a fair opportunity to elect a candidate of their choice. This figure is derived by augmenting a simple majority with an addition 5% for young population, 5% for low voter registration and 5% for law voter turn-out, for a total increment of 15%. this leads to a total target figure of 65% of total population. Obviously if voting age population statistics are used, 5% would drop out of the formula, leaving something in the vicinity of 60% of voting age population as the target percentage. . . Thus, we conclude that either 60% of the voting age population or 65% of the total population is reasonably sufficient to provide black voters with an effective majority." Id at 1348. However, I freely acknowledge that the court states that this is a guideline.

District	Population	Deviation	% Deviation	White	% White	Black	% black	AmIndian	% AmIndian	Asian	% Asian	Hawaiian	% Hawaiian	Other	% Other	Hispanic	% hispanic
1	84232	683	0.82%	80210	95.23%	1528	1.81%	306	0.36%	517	0.61%	13	0.02%	639	0.76%	2646	3.14%
2	84710	1161	1.39%	35006	41.32%	34821	41.11%	868	1.02%	4538	5.36%	63	0.07%	6344	7.49%	15467	18.26%
3	84686	1137	1.36%	79073	93.37%	2556	3.02%	306	0.36%	511	0.60%	14	0.02%	871	1.03%	3434	4.06%
4	83637	88	0.11%	78029	93.29%	1583	1.89%	2289	2.74%	509	0.61%	16	0.02%	383	0.46%	1790	2.14%
5	81820	-1729	-2.07%	77588	94.83%	1658	2.03%	255	0.31%	1326	1.62%	14	0.02%	256	0.31%	1069	1.31%
6	81931	-1618	-1.94%	74829	91.33%	3242	3.96%	154	0.19%	2259	2.76%	10	0.01%	325	0.40%	1558	1.90%
7	81979	-1570	-1.88%	68041	83.00%	4170	5.09%	151	0.18%	7663	9.35%	16	0.02%	452	0.55%	1899	2.32%
8	84069	520	0.62%	20428	24.30%	58094	69.10%	244	0.29%	2279	2.71%	27	0.03%	859	1.02%	3065	3.65%
9	82175	-1374	-1.64%	74821	91.05%	4339	5.28%	201	0.24%	1245	1.52%	13	0.02%	376	0.46%	1617	1.97%
10	84926	1377	1.65%	67809	79.84%	9611	11.32%	772	0.91%	1900	2.24%	28	0.03%	2442	2.88%	6958	8.19%
11	84875	1326	1.59%	79410	93.56%	2329	2.74%	362	0.43%	1042	1.23%	5	0.01%	480	0.57%	2228	2.63%

	18+ Pop	18+ Blk	% 18+Blk	18+ Wht	% 18+Wht	18+Hisp	% 18+Hisp
1	66671	966	1.45%	64250	96.37%	1528	2.29%
2	63866	25099	39.30%	29498	46.19%	9875	15.46%
3	65661	1700	2.59%	62196	94.72%	2107	3.21%
4	65069	1441	2.21%	61037	93.80%	1227	1.89%
5	62947	1488	2.36%	59870	95.11%	689	1.09%
6	64289	2256	3.51%	59373	92.35%	946	1.47%
7	65895	3130	4.75%	55187	83.75%	1285	1.95%
8	62211	40439	65.00%	17740	28.52%	1880	3.02%
9	67221	3011	4.48%	62349	92.75%	946	1.41%
10	67782	6989	10.31%	56151	82.84%	4225	6.23%
11	68484	1627	2.38%	64921	94.80%	1308	1.91%